

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

CHERYL SPEARS,

Plaintiff,

v.

MENARD, INC., d/b/a MENARD,

Defendant.

Case No.: 2:20-cv-00175

NOTICE OF REMOVAL

COMES NOW Counsel, Renee J. Mortimer of Lewis Brisbois Bisgaard & Smith LLP, on behalf of Defendant, MENARD, INC., incorrectly sued as MENARD, INC., d/b/a MENARD, and hereby files this Notice of Removal pursuant to 28 U.S.C.S. §1446, and invokes this Court's jurisdiction under the provisions of 28 U.S.C.S. §1332 and 28 U.S.C.S. §1441(b). In support of said removal, the Defendant states as follows:

1. On or about March 30, 2020, the Plaintiff filed her Complaint in the Lake Superior Court in Lake County, Indiana. Plaintiff alleges in the Complaint that on April 12, 2018, Plaintiff was a business invitee on Defendant's premises in Gary, Indiana and sustained personal injuries as a result of a fire extinguisher falling from the wall and striking her in the head. *See, Group Exhibit A*, Plaintiff's Complaint, ¶¶ 1-4. The Plaintiff's alleged cause of action described in those papers sounds in negligence and purported recklessness, and it was brought with style and caption as *Cheryl Spears v. Menard, Inc., d/b/a Menard* and is assigned Case No. 45D02-2003-CT-000342 (the "State Court Action"). *See Generally, Group Exhibit A*.

2. On April 10, 2020, MENARD, INC., was served with a copy of the Summons and Plaintiff's Complaint. *See Generally, Group Exhibit A.*

3. 28 U.S.C.S. §1446(b) provides that a notice of removal may be filed within thirty (30) days after receipt by the Defendants of the initial pleading. As such, Defendants' Notice of Removal is timely filed under 28 U.S.C.S. §1446(b), as the time by which removal must be effectuated is May 11, 2020, and this Notice of Removal has been filed in advance of that date.

4. At all times relevant to the Plaintiff's Complaint, Cheryl Spears, upon information and belief, was a citizen of the State of Indiana, and was residing in Gary, Lake County, Indiana.

5. Under 28 U.S.C.S. §1332(c), a corporation is deemed a "citizen" for §1332 purposes only where it is incorporated and where its principal place of business is located. *Hertz Corp. vs. Friend*, 559 U.S. 77, 80 (2010).

6. At all times relevant to the Plaintiff's Complaint, the place of incorporation and principal place of business of MENARD, INC., was Eau Claire, Wisconsin. Thus, MENARD, INC. is a citizen of the State of Wisconsin.

7. Plaintiff claims that she sustained a head injury and has debilitating headaches as a result of the the alleged incident. She further claims that her injuries from the alleged incident are in part temporary and in part permanent, and that she has endured hospital and other medical expenses, as well as pain, mental anguish, disfigurement, disability, loss of value and enjoyment of life and other pecuniary injuries. *See, Group Exhibit A, Plaintiff's Complaint, ¶ 7.*

8. Thus, the amount in controversy meets the federal requirement for removal. *See, Copak vs. State Farm Mut. Auto. Ins. Co.*, 2013 WL 450198 (N.D. Ind. 2013) (holding that where the amount in controversy is plausible based on the pleadings and the evidence, removal is proper).

9. Because the jurisdictional minimum is satisfied and the parties are of diverse citizenship, the Court has jurisdiction over this matter under 28 U.S.C.S. §1332.

10. Pursuant to 28 U.S.C.S. §1446(d), the Defendant has given written notice of this removal to all parties in the State Court Action, and has filed a copy of this Notice of Removal with the clerk of the Lake County Superior Court.

11. Pursuant to 28 U.S.C.S. §1446(a), the Defendant attaches to this Notice of Removal a copy of all pleadings, papers, and other orders served upon them in the State Court Action to date. *See, Group Exhibit A.*

WHEREFORE, the Defendant prays this Notice be granted and that said action be removed in its entirety from the Superior Court of Lake County, State of Indiana, to the United States District Court, Northern District of Indiana, as provided by law.

Respectfully submitted,

LEWIS BRISBOIS BISGAARD & SMITH LLP

By: s/ Renee J. Mortimer

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